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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

DANIEL F. BLOCH

PETITIONER

v.

LODGE COMPTON,
RACHEL RIGGSBY
&
MOUNTAINEER PUBLISHING CO., INC.,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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QUESTIONS PRESENTED FOR REVIEW

1. Did the state courts decide important questions of federal law which have not been, but should be, settled by the Supreme Court of the United States?

a. Can obstruction of justice and damage to a whistle-blower occur if a media conspirator censors news which would expose the conspiracy he seeks to maintain?

b. May a media conspirator fraudulently create a public controversy against a private individual, make him a public figure, and then claim First Amendment immunity on the basis he is a public figure, a question that rises but is not answered in *Gertz v. Welch*?

c. Should a publisher lose his privilege if he engages in malicious censorship that departs substantially from the public record: is censorship *by* a publisher to cover up news adverse to him and his friends any less noxious than government censorship *of* a publisher?

d. Does the First Amendment privilege of free press imply an obligation on a publisher to advance society's interest in uninhibited, robust and wide-open debate on public issues; and not to censor adverse news damaging to himself and his friends, by deliberate, long-term hiding from the public of facts he would otherwise publish, in highly unreasonable conduct constituting an extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers?

2. Was the trial court's recollection of the testimony accurate, and supported by the record?

TABLE OF AUTHORITIES

Curtis Publishing Co. v. Walker
87 S Ct 1975 (1967) ..... Pages 6, 10, 12.

Gertz v. Welch
94 S Ct 2997 (1974) ..... Pages 1, 6, 7, 10.

Mills v. Kingsport Times News
D.C. Va. 4th Ct 475 F. Supp. 1005 (1979) ..... Pages 7, 9.

New York Times v. Sullivan
84 S Ct 710 (1964) ..... Pages 1, 6, 7, 10.

Time, Inc. v. Pape
91 S Ct 633 (1971) ..... Pages 6, 10.

OFFICIAL AND UNOFFICIAL COURT OPINIONS

JURY VERDICT:

"Daniel F. Bloch against Mountaineer Publishing Company, Lodge Compton and Rachel Riggsby: We the jury on issue joined find in favor of the plaintiff and assess his damages at One Hundred and Fifty Thousand Dollars. R. M. Beverly, Foreman."

TRIAL COURT:

"Now, the Court could have stricken the evidence at the conclusion of plaintiff's evidence. The Court did not see fit to do so and did not do so. The Court could have stricken the evidence at the conclusion of all the evidence. The Court did not see fit to do so.

"Instructions given are the law of the case.

"Federal statute would not be applicable to the libel suit here in this case.

"The Court is setting aside the verdict of the jury."

VIRGINIA SUPREME COURT:

"Finding no reversible error in the judgment complained of, the court refuses the petition for appeal in the above-styled case."

CONSTITUTIONAL PROVISIONS

The First Amendment to the Constitution provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government for redress of grievances."

The Seventh Amendment to the Constitution provides:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of common law."

STATEMENT OF THE CASE

1. Petitioner sued two individuals and their small-town newspaper (the only newspaper published in the county) alleging damage from cover up *and* libel. Petitioner alleged respondents conspired with local friends who own a privately-run orphanage to make a fair jury panel impossible, and were also responsible with the orphanage for having petitioner jailed on the false charge he 'abducted' two orphans to a circuit court so they could complain about child abuse at the orphanage. Petitioner alleged respondents tried to discredit petitioner's motive by censoring news favorable to petitioner and publishing a headline falsely stating petitioner's attorney had testified about illicit conduct by petitioner, and that the article accompanying the headline maliciously omitted facts which refuted the statement.

2. Petitioner alleged respondents knew the defamation was false because they carefully censored admissions of beatings by orphanage personnel and the boys' own testimony before several courts, and published the headline in reckless disregard of whether or not it was false, maliciously mis-quoting petitioner's attorney out of context.

3. Petitioner alleged respondents' long-time censorship of numerous facts adverse to their friends and favorable to petitioner (a policy they admitted sometimes practicing) was further proof of respondents' malice and reckless disregard of whether or not the defamation was false. Respondents could not refute petitioner's allegations that respondents had censored news over an eight year period that was damaging to the orphanage and favorable to petitoner.

4. Trial court denied respondents' motions to dismiss three times: before trial, at end of petitioner's evidence and again at the end of respondents' evidence, handing the case to the jury after carefully instructing them.

5. Jury found for petitioner and awarded him $150,000.00.

6. Trial court then set aside the verdict of the jury, claiming jury found evidence of libel without cause. Trial court confined its remarks to question of libel. It did not address petitioner's allegation of damage from respondents' eight-year cover-up in which they censored news of orphans' lawsuits alleging child abuse, which petitioner tried to expose.

7. Petitioner sought review by the Virginia Supreme Court, which found no reversible error and refused his petition for appeal without comment, without any findings of fact or conclusions of law, despite the jury's verdict for petitioner.

WHERE FEDERAL QUESTIONS WERE RAISED

1. Federal questions were raised by the trial court in its ruling setting aside the verdict of the jury. (Appx. 10.)

2. The trial court cited four cases decided by the Supreme Court of the United States that were not on point, and based its opinion primarily on *New York Times v. Sullivan, Curtis Publishing Co. v. Butts, Gertz v. Welch, and Time, Inc. v. Pape.* (Appx. 10.)

3. The Supreme Court of Virginia denied the petition for appeal without comment. (Appx. 13.)

BASIS FOR FEDERAL JURISDICTION

This petition to the Supreme Court of the United States is sought pursuant to 28 U.S.C. § 1257, which gives the Supreme Court jurisdiction to review a final judgment by the highest state court after entry of judgment.

In this case the highest state court is the Supreme Court of Virginia, which entered its final judgment on June 24, 1982, rehearing denied on September 9, 1982.

ARGUMENT

1. The spirit and intent of all the Supreme Court First Amendment decisions from *New York Times* to *Gertz* were to advance "society's interest in uninhibited, robust and wide-open debate on public issues." The various Court opinions recoil against any policy that might lead the press, fearing defamation suits, into self-censorship.

2. The corollary question of deliberate, malicious censorship by a publisher to hide the truth from the public has never been addressed by the Court.

3. Whenever there has been conflict between the states' right to enact laws against defamation and press freedom, the Court has found the latter must be paramount. Many justices have held that the public's right to know must be protected. Malicious censorship to hide the truth from the public is therefore logical evidence the publisher knew the defamatory material he printed was false. The concept is a sensible extension of the *New York Times* rule that requires proof the publisher knew the defamation was false or published it with reckless disregard of whether or not it was false.

4. The United States District Court for the Western District of Virginia found, "To be privileged the newspaper article must be an impartial and accurate account of the event as recorded in the public records. Verbatim accounts are not required, but the article must not constitute a substantial departure from the public record. So, if the departure is substantial, the privilege is lost, and malice is inferred from the publication of defamatory material." *Mills v. Kingsport Times-News*, 475 F. Supp. 1011.

5. What if a publisher censored news because it was damaging to his friends? If, as alleged in this case, the publisher refused to print news of two federal lawsuits filed against his friends, one by the Ohio Welfare Department because their wards were being withheld contrary to law by the owners of a privately-run orphanage, which fact petitioner made sure the publisher knew by bringing it to his attention personally; if the publisher refused to print news of several other lawsuits against the orphanage by ex-residents charging child abuse; if the publisher refused to print a cash-in-advance advertisement that would re-print verbatim a news account of the lawsuits against the orphanage reported by the *Bristol Herald-Courier*; if the publisher then refused to print an advertisement by the *Society to Offer Placements to Orphans* because it might compete with the local orphanage, a regular printing customer, by placing orphans in private homes; if the publisher claimed he had no room to print an orphan's letter to the editor asking fellow ex-residents to contact him regarding an investigation of the orphanage by the U.S. Attorney (while the publisher found room to print an ex-soldier's letter seeking the location of an old army buddy); if the publisher refused to print news that suits had been filed challenging the constitutionality of a state statute generally unknown to the public (which made the orphanage the only one in Virginia exempt from state welfare licensing, supervision and inspection); if the publisher, who printed the only newspaper in the county, went out of his way for at least eight years to propagandize the region about the good works of the orphanage while censoring everything adverse: did this advance society's interest in wide-open debate on public issues?

6. Petitioner contends the Supreme Court should find that a publisher should lose his First Amendment privilege if he covered up information of which it could be proved he had definite knowledge, and ordinarily would have printed, but did not, just to protect his friends. Petitioner contends there is a First Amendment duty for a publisher not to depart substantially from the public record, as per *Mills v. Kingsport Times-News*, to suppress news which the public has an overriding right to know.

7. If the publisher refused to print highly damaging admissions by the orphanage staff and conspired with them to cover up adverse news and impugn petitioner over an eight year period: did the publisher not have knowledge the defamation was false, and did he not proceed with reckless disregard of whether or not it was false when he printed defamatory statements and mis-leading half-truths about petitioner?

8. If none of the above acts imply malice, libel and conspiracy to cover up the truth; and if witnesses' testimony that petitioner was jailed falsely [for taking two orphans to a judge to complain] was not evidence of damage that resulted from respondents' conspiracy with the orphanage, then the publisher did not lose his privilege and did not impede the public's interest; and the jury was wrong and the trial court correct in setting aside the verdict of the jury.

9. Petitioner contends the question of press privilege being lost by malicious censorship has never been addressed by the Supreme Court, but should be.

10. "Truth is not only violated by falsehood, it may be equally outraged by silence." – Henry Amiel, 1821-1881.

11. Trial court's recollection of the testimony was inaccurate, and not supported by the record. The jury, which had access to the record, is the constitutionally-mandated tribunal to determine fact.